

आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI PAWAN SINGH, JM

आयकर अपील सं./I.T.A. No. 5438/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2011-12)

M/s. Bharat Wire Ropes Ltd. A-701, Trade World Building, Kamla City, Lower Parel (W), Mumbai-400 013	बनाम/ Vs.	DCIT(OSD)-10(3) Aayakar Bhavan, 4 th Floor, Room No. 517, M. K. Road, Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABCB 2180 N		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Mitesh N. Shah
प्रत्यर्थी की ओर से/Respondent by	:	Shri T. A. Khan
सुनवाई की तारीख / Date of Hearing	:	14.12.2017
घोषणा की तारीख / Date of Pronouncement	:	05.03.2018

आदेश / ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order by the Commissioner of Income Tax (Appeals) dated 15.10.2015 and pertains to the assessment year 2011-12.

2. There are two effective grounds raised in this appeal which reads as under:

1. a) On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the addition to the extent of 12.5%, being profit element embedded in the alleged bogus purchases of Rs.2,66,19,848/-, made by the

A.O. to the income of the Appellant on the basis of information of the Sales Tax Department about suspicious dealers.

2. a) On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the action of the A.O. in rejecting the claim of the Appellant in respect of capital expenditure of Rs.1,05,12,600/- incurred on earth filling of the land on the plea that the notices issued u/s. 133(6) have not been responded or returned back by the postal authority and thereby further erred in confirming the reduction in the cost of land made by the A.O.

b) The Id. CIT(A) failed to appreciate that the cost of land by way of earth filling is supported by sufficient materials and the payment has been made by account payee cheques.

Apropos ground no. 1:

3. The assessee is a company engaged in the business of manufacturing of Wire & Wire Ropes. The return of income for the year under appeal was filed on 22.09.2011 declaring total income of Rs.2,13,86,708/-. Assessment u/s. 143(3) was completed by the Assessing Officer on 27.02.2014 determining the total income at Rs.5,55,04,010/-. During the course of assessment proceedings, the Assessing Officer observed that the assessee had debited purchases of Rs.2.66 crores from various parties whose TIN matched with the information received from the Sales Tax Department regarding bogus parties with whom the assessee had made purchases. The Assessing Officer *inter alia* noted that the assessee company failed to furnish the supporting documentary evidence to establish that the purchases were actually made by them such as transportation documents, inward register at the site of the assessee establishing that the material has been received by them. The Assessing Officer on going through the submissions and contentions of the assessee at length, concluded

that the assessee did not purchased any goods from the above parties and hence, addition in respect of investment made out of unaccounted money by the assessee for purchase of materials from the parties of Rs.2,66,19,848/- was treated as bogus purchases and added to the returned income of the assessee.

4. Upon the assessee's appeal, the Id. Commissioner of Income Tax (Appeals) analysis the facts of the case as under:

Briefly stated, the appellant is a partnership firm engaged in the business of manufacturing of Wire & ire Ropes. Ld. AO made the addition on the basis of information received from the Investigation Wing of the Income Tax Department, Mumbai that the Sales Tax Department had recorded the statements of certain hawala operators who have confirmed to have given bogus bills to certain assessees including the appellant company. The bogus bills were in respect of M/s Ronak Industries & M/s Siddhivinayak Steel. The appellant company was asked to submit the details of purported purchases made from these two parties and to show cause why the same should not be disallowed as bogus purchases. The appellant had filed their reply stating that purchases were made from regular parties supported by proper bills and the accounting entries and the payments were made by account payee cheques. The Ld, AO was not in agreement with the submissions of the appellant and observed that the appellant failed to furnish the supporting documentary evidence to support that the purchases were actually made by them such as transportation documents, inward register etc. The Investigation Wing of Mumbai had provided a list of hawala bill racketeers who were involved in issuing biils and also the list of beneficiaries. The Sales Tax Department of Mumbai had investigated all these cases thoroughly and prepared a list of such hawala operators and their beneficiaries which have been uploaded in their Website. The Ld. AO observed that these hawala operators were providing only accommodation entries and the appellant was also in the list of beneficiaries. Accordingly, the Ld. AO -treated the amount of Rs.2,66,19,848/- as bogus purchases and added back to the total income of the appellant.

2.4.4 Perusal of the details of the bills indicate that the column for vehicle number was left blank in each of the delivery challan/invoice. The supplier was in fact the appellant's witness and the Ld. AO was not required to force its

attendance. It was for the appellant to produce it as per Civil Procedure Code which applies on all fours to the income-tax proceedings. It is trite that once a transaction is shown to be of the nature of income, the onus shifts to the assessee to show that the same was not taxable. It can thus be safely assumed that the appellant has grossly failed in its duty to mitigate the burden cast upon it in so far as proving the genuineness of the transaction from the said parties is concerned.

5. Thereafter the Id. Commissioner of Income Tax (Appeals) refers to catena of case laws and finally sustained 12.5% of the bogus purchases following the Hon'ble Gujarat High Court decision in the case of *CIT vs Simit P. Sheth* [2013] 356 ITR 451 (Guj.).

6. Against the above order, the assessee is in appeal before us.

7. We have heard both the counsels and perused the records. Upon careful consideration, we note that in this case the Assessing Officer has not made proper enquiry. He has primarily relied upon the information from the Sales Tax Department. Even notice to the concerned suppliers has not been issued. The Assessing Officer as well as the Id. Commissioner of Income Tax (Appeals) has relied primarily on the information supplied by the Sales Tax Department. In our considered opinion, this information from the Sales Department cannot be a conclusive proof of bogus purchase. It was incumbent upon the Assessing Officer to make appropriate enquiries. The Hon'ble Apex Court in the case of *Kapoorchand Srimal* (131 ITR 451) has held that it is the duty of the appellate authority to correct the errors in the orders of the authorities below and remit the matter for fresh consideration unless prohibited by

law. In accordance with the above said discussion and case law, we remit this issue to the file of the Assessing Officer. The Assessing Officer is directed to consider the issue afresh after making proper enquiries in this regard.

Apropos ground no. 2

12. Brief facts of the case on this issue are that during the course of assessment proceedings, it was observed by the Assessing Officer that the assessee has capitalized an amount of Rs.1,05,12,600/- for the purchase of river sand used for levelling. Notices u/s 133(6) of the Act issued to M/s Eagle Traders and M/s Mohan Trading from whom the assessee had purchased river sand of Rs.1,05,12,600/- were not responded to. The contention of the assessee was not found to be true and as no evidence was furnished in support of the assessee's claim, Assessing Officer held that the amount of Rs.1,05,12,600/- is to be reduced from the Capital Asset, 'land'.

13. Before the Id. Commissioner of Income Tax (Appeals), it was submitted that no deduction of whatsoever nature was claimed by the assessee in respect of land levelling expenses nor any deduction on account of depreciation on the said land was claimed and as such there could be no addition by way of disallowing such expenses. It was further posited that disallowance of any expenses pre-supposes the claim of deduction of such expenses which is absent in this case. Considering the above, the Id. Commissioner of Income Tax (Appeals) held as under:

However, from the assessment order and the computation attached therewith, I find that no addition to the appellant's income has been made on account of

land leveling" charges and, therefore, to that extent the appellant's grievance is irrelevant to the grounds raised. In any case, what the Ld. AO has done is to hold that such capital expenses which were unproven shall be reduced from the cost of the asset. It is true that the payments were made by the appellant by account payee cheque and merely on the ground that there was no response to notice u/s u/s 133(6), no addition to income could have been made but as pointed out earlier, I find that no addition to the appellant's income was actually made. Nevertheless the onus cast upon the appellant has not been fully discharged and hence, the ground raised by the appellant in this regard needs to be dismissed with the caveat that the reduction from the value of the land shall be applicable for computation of capital gain in case the appellant decides to sell the said property at any point of time in future.

14. Against the above order, the assessee has filed the appeal before the ITAT.
15. We have heard both the counsel and perused the records. Since we have already remitted the ground no.1 in this regard to the file of the Assessing Officer, we deem it appropriate to remit this issue also to the file of the Assessing Officer. The Assessing Officer is directed to make proper enquiries and consider the issue afresh.
16. In the result, this appeal by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 05.03.2018

Sd/-

Sd/-

(Pawan Singh)

(Shamim Yahya)

न्यायिक सदस्य / Judicial Member

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 05.03.2018

व.नि.स./Roshani, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai